

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER

FINAL FINDING AND DECISION

of a
Noncompetitive Sale to Preference Right Applicant – ADL 45586
AS 38.05.102, AS 38.05.321, AS 38.05.035(e)

This Final Finding and Decision (FFD) complements and updates the Preliminary Decision (PD) issued on February 3, 2022. The PD (attached) has had the required public review.

I. Recommended Action

The State of Alaska (State), Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Land Conveyance Section (LCS) recommends offering for noncompetitive sale a parcel of state-owned land for private ownership pursuant to Alaska Statute (AS) *38.05.102 Lessee Preference*. LCS recommends allowing the parcel to be sold through a non-competitive sale to the applicant and will impose deed restrictions as required by AS *38.05.321 Restriction on Sale, Lease, or Other Disposal of Agricultural Land* to limit post-patent land use to agricultural purposes. The parcel is located approximately eight miles east of the junction of the Steese Highway and Chena Hot Springs Road and is approximately 11 miles northeast of downtown Fairbanks. The parcel encompasses the applicant's agricultural lease of 79.88 acres, more or less.

II. Authority

DNR has the authority under AS *38.05.102 Lessee Preference* to sell state-owned lands and under AS *38.05.321 Restriction on Sale, Lease, or Other Disposal of Agricultural Land* to restrict the land to agricultural use only if, on preparation and issuance of a written finding, it is determined to be in the best interest of the State, as required by AS *38.05.035(e) Powers and Duties of the Director*. Article VIII, Section 1, of the Constitution of the State of Alaska states, "It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest."

III. Public Participation and Input

Pursuant to AS *38.05.945 Notice*, public notice inviting comment on the PD for the proposed action was published and distributed in the following manner:

- Posted on the State of Alaska Online Public Notice website from February 3, 2022, to March 8, 2022;
- Posted on the Public Notices page of the DNR DMLW Alaska State Land Sales website from February 3, 2022, to March 8, 2022;
- Mailed to postmasters in Fairbanks at the Rohloff Street, Barnette Street, Fairbanks Street, and Mail Train Road post offices with a request to post for 30 days, per AS *38.05.945(c)(4)*;
- Mailed to the Noel Wien and North Pole Branch Public Libraries with a request to post for 30 days;
- Mailed to Doyon, Limited per AS *38.05.945(c)(2)-(3)*;
- Emailed to the Fairbanks North Star Borough Mayor's office per AS *38.05.945(c)(1)*;

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- Mailed to the applicant and 174 adjacent landowners within a one-mile radius of the parcel; and
- Emailed notice to the Alaska Center for the Environment, Alaska Soil and Water Conservation District, Alaska Miners Association, University of Alaska Land Management Department, Trustees for Alaska, and all State agencies who received the agency review notice.

The public notice stated that written comments were to be received by 4:30 PM, March 8, 2022, in order to ensure consideration and eligibility to appeal. For more information, refer to the attached PD.

IV. Comments Received

DNR DMLW LCS received eight written comments during the public comment period. All comments received during the public comment period are summarized and addressed below.

DNR DMLW LCS received brief comments of non-objection from the following:

DNR Division of Forestry, Trust Land Office, and the Alaska Department of Fish and Game.

DNR DMLW LCS Response: LCS appreciates your review.

DNR Division of Agriculture Comment: The State Farm Conservation Plan (SFCP) does not become “invalid” on September 21, 2025, as stated in the PD. SFCPs are valid once approved and remain valid until the next SFCP is approved.

DNR DMLW LCS Response: Thank you for your comment, it is noted that the applicant’s SFCP will not expire in 2025 as previously stated.

Individual Comment regarding water concerns and access: One commenter was worried about the impact that the applicant’s mushroom growing business will have on the local groundwater and any possible run-off into the Little Chena River. The commenter also wanted to ensure improvement on this parcel will not impede access to the existing winter trail located along the section line on the east side of the proposed sale. The commenter noted this trail provides direct access from the 9 Mile Chena Hot Springs Road community to the Little Chena River and local area trails, including the Yukon Quest Trail.

DNR DMLW LCS Response: Thank you for your comment. The applicant submitted an approved SFCP in which they state “no irrigation is planned for surface waters. If this plan changes, a water right will be obtained from the water section of DMLW”. The applicant has provided information about their mushroom growing business in which they will be using organic, sustainable growing practices that produce no liquid discharge and use no hazardous chemicals that could potentially enter the local ecosystem. The applicant estimates that one and a half to two gallons of clean water per pound of mushrooms produced will be needed and this liquid will evaporate naturally producing no runoff water. Water will be trucked in from the City of Fairbanks water supply and held in an above-ground holding tank.

Additionally, a 50-foot section line easement will be reserved along the eastern edge of the subject parcel in accordance with AS 19.10.010 *Dedication of Land for Public Highways* and 11 AAC 51.025 *Section-line Easements* and provide access to the

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existing winter trail. The applicant may not impede access along this section line easement.

Individual Comment with no objection to proposed sale but commented regarding potential sources of hazmat on the parcel: One commenter thought that an informal shooting range near the east edge of the property could be a potential source of hazmat and should be mentioned in the proposed decision. The commenter also inquired if access to the shooting range would be allowed or not. They also mentioned several other sites of potential hazmat including a collapsed mobile home.

DNR DMLW LCS Response: Thank you for your comment. The shooting range has been added to the affidavit acknowledging the condition of the land and releasing the State from related liability due to the presence of the abandoned mobile home and gun range. The applicant was contacted about the shooting range and stated that this was an informal shooting range located at the far east end of the property that was used recreationally. The applicant does not personally use the shooting range, does not want it there, and intends to tear it down.

DMLW makes no warranties as to the 'nonexistence' of contamination not now identified and that state records are not a warranty as to all potential contamination. DMLW's understanding is that lead shot is not considered a hazardous waste subject to the Resource Conservation and Recovery Act (RCRA) at the time it is discharged from a firearm because it is used for its intended purpose. As such, shooting lead shot (or bullets) is not regulated. However, spent lead shot (or bullets), left in the environment, is subject to the broader definition of solid waste written by Congress and used in sections 7002 and 7003 of the RCRA statute. We understand that the soil with lead shot at the site is exempt from RCRA. However, if the soil is to be removed off-site, then it would require testing to determine if it is a RCRA hazardous waste.

Two individuals commented with concerns that future development of the parcel could potentially interfere with the safe operating environment of the airstrip that abuts the western side of the parcel. The airstrip utilizes the airspace above the subject property for departure and landing.

DNR DMLW LCS Response: Thank you for your comment. The Federal Aviation Administration (FAA) is responsible for determining what constitutes obstructions to air navigation. LCS suggests coordination with FAA regarding any future development of buildings or structures that may be constructed to such a height that may interfere with airspace. Additionally, any future development of the parcel must adhere to Fairbanks North Star Borough's code and zoning regulations.

V. Traditional Use Finding

In accordance with AS 38.05.830 *Land Disposal in the Unorganized Borough*, a Traditional Use Finding is required for project areas within the Unorganized Borough. The subject parcel is located within an organized borough; therefore, no Traditional Use Finding is required.

No conflicts with traditional uses of the land have been discovered. Public review brought forth no new information indicating traditional use conflicts that were not apparent at the PD stage.

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VI. Modifications to Decision

Pursuant to comments received during the public notice period, there are several minor corrections or clarifications made between the PD and FFD. None of the below modifications change the original proposed action as described in the PD.

- An amended map has been provided to better depict the scale of ADL 17945 in relation to the subject parcel.
- The applicant's SFCP does not expire in 2025 as previously stated in the PD but will remain valid until the next SFCP is approved.
- Determination NC-10-004D16 was corrected on April 14, 2022, to include the subject parcel within the Eastern Tanana Area Plan (ETAP) Management Unit F-50, designated Agricultural, and classified as Agricultural Land. The original determination included the parcel in ETAP Management Unit F-49 and classified the parcel as Settlement. The management intent of both Units F-50 and F-49 is identical in that land disposals are appropriate during the planning period. The placement of the parcel into a management unit designated Agricultural as opposed to Settlement does not impact the proposed decision as land in both is suitable for disposal.

VII. Stipulations

The applicant will be required to comply with the following stipulations to complete the proposed land sale:

1. As a condition of sale, the applicant must sign an affidavit acknowledging the condition of the land and releasing the State from related liability due to the presence of the abandoned mobile home and informal gun range.
2. The lessee must remain in good standing with respect to the terms of the lease until the lease is relinquished. If the lessee is not in good standing at any time prior to the relinquishment of the lease, the purchase process will be halted until the lessee regains good standing as determined by DMLW.
3. A notice to proceed to survey will be issued if no appeals are received, or when appeals are resolved, after issuance of a Final Finding and Decision. The applicant must hire a surveyor and the surveyor must apply to DMLW's Survey Section for Survey Instructions. The applicant's survey must be approved by DMLW and Fairbanks North Star Borough Platting Authority as outlined in the Survey Instructions. Survey costs shall be borne by the applicant.
4. Upon approval and recording of the survey, a notice to proceed to appraisal will be issued. Within two years from the date of the notice to proceed to appraisal, the applicant must hire an appraiser from DNR's Approved Appraiser list. The appraiser must apply for appraisal instructions issued by DMLW and then must submit a completed fair market value appraisal to LCS in accordance with the appraisal instructions.
5. Upon approval of the appraisal, a notice to proceed to purchase will be issued to the applicant. Within two years of an approved appraisal, the applicant must submit the following to LCS:
 - A signed and notarized affidavit acknowledging the condition of the land and releasing the State from related liability;

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- A completed and signed Declaration of Intent Form;
 - A signed and notarized Relinquishment of Land Lease form;
 - A completed Veteran's Land Discount form (if eligible); and
 - Payoff amount plus patent application and recordation fees OR minimum 5% of the purchase price as a deposit plus land sales contract application and recordation fees. Fees are established under *11 AAC 05.100 Land Disposals* and *11 AAC 05.200 Recorder's Office* and are subject to change. Some fees have been reduced by Director's Order Number 3.
6. Prior to the completion of the purchase and issuance of a state conveyance document, the applicant must remain in good standing with respect to all terms of the Contract for the Sale of Real Property throughout its term, if such contract is issued. As an agricultural land sale, the Contract for the Sale of Real Property may include agricultural development requirements to be completed in a specified timeframe. The applicant must also remain in compliance with all applicable state and local ordinances and regulations, including all applicable taxes. Failure to do so may result in termination of the Contract for the Sale of Real Property.

Special Note: The applicant must complete steps 1-6 above by *February 7, 2024*, to ensure the applicant has a signed land sales contract before the lease expires on *May 7, 2024*. Failure to do this will result in the loss of the right to purchase this parcel of land or may need to enter into a lease renewal and incur associated costs.

If extenuating circumstances delay any of the stipulations listed above, the applicant is responsible for notifying LCS and receiving approval from LCS for the delay with new timeframes for completion to be given. Failure to do this could result in the closure of the purchase application. The purchase cannot be completed until all the above stipulations have been satisfied.

Recommendation and approval of the Final Finding and Decision follow.

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VIII. Final Finding and Decision

The Land Conveyance Section recommends proceeding with the action as described in the Preliminary Decision. This action is undertaken under relevant authorities.

The findings presented above have been reviewed and considered. Public notice has been accomplished in accordance with *AS 38.05.945 Notice*, and comments received were considered. The case file has been found to be complete and the requirements of all applicable statutes have been satisfied. LCS recommends proceeding with the proposed action as described in the Preliminary Decision and this Final Finding and Decision.

[Signature on File]

Recommended by: Rachel Longacre
Section Chief
Land Conveyance Section
Division of Mining, Land and Water
Department of Natural Resources
State of Alaska

5/11/2022

Date

Under the authority of the applicable statutes, it is in the best interest of the state to proceed with the recommended action(s) as described in this Final Finding and Decision.

[Signature on File]

Approved by: Marty Parsons
Director
Division of Mining, Land and Water
Department of Natural Resources
State of Alaska

5/16/2022

Date

Appeal Provision

A person affected by this decision who provided timely written comment or public hearing testimony on this decision may appeal it, in accordance with 11 AAC 02. Any appeal must be received within 20 calendar days after the date of "issuance" of this decision, as defined in 11 AAC 02.040(c) and (d) and may be mailed or delivered to the Commissioner, Department of Natural Resources, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501; faxed to 1-907-269-8918, or sent by electronic mail to dnr.appeals@alaska.gov. Under 11 AAC 02.030, appeals and requests for reconsideration filed under 11 AAC 02 must be accompanied by the fee established in 11 AAC 05.160(d)(1)(F), which has been set at \$200 under the provisions of 11 AAC 05.160 (a) and (b). If no appeal is filed by the appeal deadline, this decision goes into effect as a final administrative order and decision of the Department on the 31st day after issuance. An eligible person must first appeal this decision in accordance with 11 AAC 02 before appealing this decision to Superior Court (11 AAC 02.020(a) and (b)). A copy of 11 AAC 02 may be obtained from any regional office of the Department of Natural Resources.

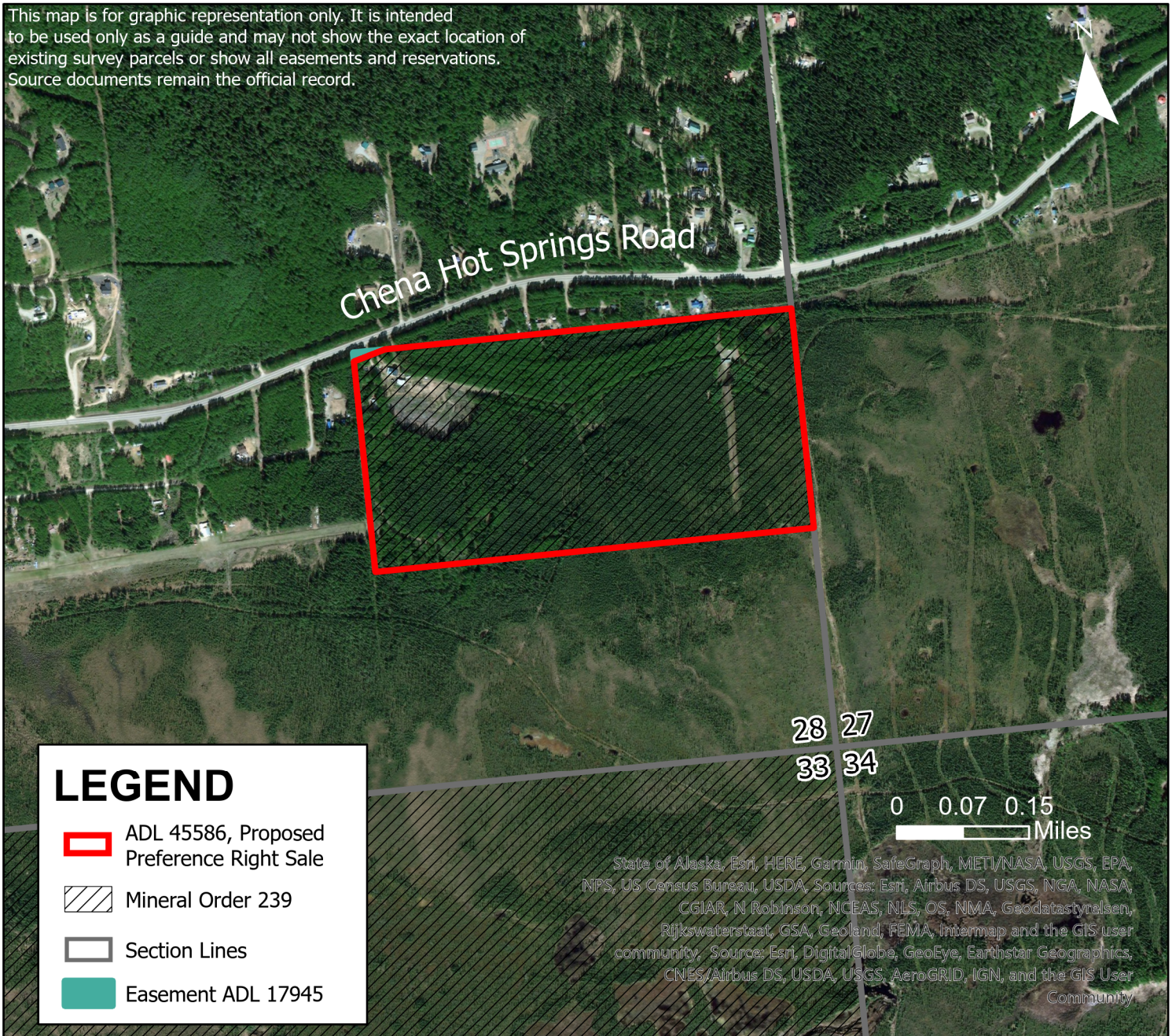


Elizabeth Kendall
ADL 45586

Attachment A: Vicinity Map

Proposed Noncompetitive Sale
Pursuant to AS 38.05.102

This map is for graphic representation only. It is intended to be used only as a guide and may not show the exact location of existing survey parcels or show all easements and reservations. Source documents remain the official record.



Section 28, Township 01 North, Range 02 East, Fairbanks Meridian

USGS Quad 1:63,360 Fairbanks D-1

For more information contact:
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KMA 04/20/2022



STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER

PRELIMINARY DECISION
ADL 45586

Proposed Noncompetitive Sale to Preference Right Applicant
AS 38.05.102, AS 38.05.321

PUBLIC COMMENT PERIOD ENDS 4:30 PM, TUESDAY, MARCH 8, 2022

I. Proposed Action

Preliminary Decision: Proposed Noncompetitive Preference Right Parcel Sale ADL 45586

Attachment A: Vicinity Map

Attachment B: Public Notice

Proposed Action, Noncompetitive Sale: The State of Alaska (State), Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Land Conveyance Section (LCS) has received an application from Elizabeth Kendall to purchase a parcel of state-owned land pursuant to Alaska Statute (AS) 38.05.102 *Lessee Preference*. LCS proposes to allow the parcel to be sold through a non-competitive sale to the applicant and will impose deed restrictions as required by AS 38.05.321 *Restriction on Sale, Lease, or Other Disposal of Agricultural Land* to limit post-patent land use to agricultural purposes. The parcel is located approximately eight miles east of the junction of the Steese Highway and Chena Hot Springs Road and is approximately 11 miles northeast of downtown Fairbanks. The parcel encompasses the applicant's agricultural lease of 79.88 acres, more or less. See *Attachment A: Vicinity Map* for a depiction of the subject parcel.

AS 38.05.102 Lessee Preference allows the granting of a preference right purchase or lease to those holding leases authorized under AS 38.05.070-105 *Alaska Land Act* who are currently in good standing. A 1981 amendment to AS 38.05.070 *Generally* made this section inapplicable to short-term leases.

Public Notice of Proposal: In accordance with AS 38.05.945 *Notice*, during a period of at least 30 consecutive days, the public will have the opportunity to submit written comment on this proposal.

See **Section VII. Submittal of Public Comments** and *Attachment B: Public Notice* for details on how to submit a comment for consideration. If, after consideration of timely, written comments, LCS moves forward with the proposal, a Final Finding and Decision (FFD) will be issued.

II. Authority

DNR has the authority under AS 38.05.102 *Lessee Preference* to sell state-owned lands and under AS 38.05.321 *Restriction on Sale, Lease, or Other Disposal of Agricultural Land* to restrict the land to agricultural use only if, on preparation and issuance of a written finding, it is determined to be in the best interest of the State, as required by AS 38.05.035(e) *Powers and Duties of the Director*. Article VIII, Section 1, of the Constitution of the State of Alaska states, "It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest."

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III. Administrative Record

The project file for Alaska Division of Lands (ADL) 45586 constitutes the administrative record for this proposed action. Also incorporated by reference are:

- Eastern Tanana Area Plan adopted August 28, 2015;
- DNR case files: ADL 17945, ADL 214785, OSL 790, QCD 584; and
- Federal case files: F 011004, F 029045.

IV. Scope of the Proposal

The scope of this proposal, under the statutes described in the preceding **Section II. Authority**, is limited and specific to determining the following: (1) if the applicant and subject parcel themselves qualify, (2) if it is in the State's best interest to sell the subject parcel, and (3) if it is in the State's best interest to sell the subject parcel to the applicant. Additionally, it includes identification of any third-party interests, other interests of record, and stipulations necessary to ensure statutory requirements have been met.

V. Description

- a. Location: Within DNR's Northern Region, the subject parcel is located south of Chena Hot Springs Road, approximately eight miles east of the junction of the Steese Highway and Chena Hot Springs Road and is approximately 11 miles NE of downtown Fairbanks. See *Attachment A: Vicinity Map* for additional information.

USGS Map Coverage: Fairbanks D-1

Platting Authority: Fairbanks North Star Borough

Native Councils and Corporations: Doyon, Limited is the regional ANCSA corporation for the Fairbanks area. There are no villages within 25 miles of the subject parcel.

- b. Legal Description: That portion of the N1/2 SE1/4 according to the survey plat of Township 1 North, Range 2 East, Fairbanks Meridian, Alaska, accepted by the United States Department of the Interior, Bureau of Land Management in Washington, D.C. on March 10, 1947, excluding the Chena Hot Springs Road right of way as depicted on the Department of Public Works, Division of Highways, Right of Way Map, Alaska Project No. S-06050(7), approved 10/2/62. Containing 79.88 acres, more or less.
- c. Title: Information from Title Report No. 21726, current as of April 16, 2021, indicates the State of Alaska received title to the subject parcel on February 27, 1963, under Federal Patent #1231061. On October 21, 1983, the State of Alaska transferred the State's interest in the parcel through Statutory Quitclaim Deed No. 584 to the Board of Regents of the University of Alaska, as trustee for the University of Alaska. On December 21, 1983, Statutory Quitclaim Deed, dated December 2, 1983, was issued from the Board of Regents to the State of Alaska. The parcel is subject to the reservations, easements, and exceptions contained in the federal patent.

State Reservation of Title:

Retention of and Access to Mineral Estate: In accordance with *Section 6 (i) of the Alaska Statehood Act* and *AS 38.05.125 Reservation*, the State retains ownership of all oil, gas, coal, ore, minerals, fissionable material, geothermal resources, and

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fossils that may be in or upon the land that it sells. This retention is for all minerals, including both locatable minerals (such as gold, copper, silver, etc.) and leasable minerals (such as oil, gas, coal, etc.).

The State and its successors reserve the right to enter onto the land for the purposes of exploring for, developing, and producing these reserved mineral resources. Access reserved to these retained interests is superior to any and all land uses. The State may also lease these retained interests to mineral developers or allow mining locations to be staked. However, *AS 38.05.130 Damages and Posting of Bond* also provides that the landowner will be compensated for damages resulting from mineral exploration and development.

Navigable Waters: Per *AS 38.05.126(b) Navigable and Public Waters*, "...the State has full power and control of all of the navigable or public water of the State, both meandered and unmeandered, and the State holds and controls all navigable or public water in trust for the use of the people of the State." This trust is in accordance with the principles of the Public Trust Doctrine, which are included in Article VIII, Section 14 of the Constitution of the State of Alaska and protected in the United States Constitution. It is vested in the title to this land, is not transferable, and the State's title to submerged lands under navigable waters cannot be relinquished by a transfer of the property. In holding with this concept, navigability determinations are made, and access will be reserved per *AS 38.05.127 Access To and Along Public and Navigable Water*. For more information, see [Access, Including Access To and Along Public or Navigable Water](#) subsection of this document.

Native Interest: The subject parcel is within the boundaries of the Doyon, Limited regional corporation. There are no Native interests identified with this parcel.

Other Conflicts or Pending Interest:

- Public easement ADL 17945 right-of-way permit for Chena Hot Springs Road/Dedication of Right of Way, dated 7/30/1987, recorded in Book 538, Page 271

d. Background:

On May 8, 1969, Charles Goff Jr. entered into a 55-year lease with the State for approximately 80 acres of land classified as Agricultural. The lease, serialized as ADL 45586, will expire on May 7, 2024, and was issued under the authority of *AS 38.05 Alaska Land Act*. The terms of the lease restrict the use of the land to agricultural purposes, expressly stating that any use of the land in conflict with the land classification constitutes a breach of the lease and may be subject to termination. This lease is recorded in Book 1193, Pages 230-233, in the Fairbanks Recording District.

In accordance with the terms of the lease, the lessee had the ability to assign the lands, or a portion of the land, if it was determined that the assignment was in the best interest of the State. Upon the Department's approval, the assignment would be granted, and the assignee became subject to the terms of the original lease. The lease was subsequently assigned from Charles I. Goff Jr. to Elizabeth Benson (now Elizabeth Kendall) on March 15, 2000 (recorded in Book 1193, Pages 234-235 in the Fairbanks Recording District). In

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July 2020, Elizabeth Kendall applied to purchase ADL 45586 under *AS 38.05.102 Lessee Preference*.

As required by 11 AAC 67.177 *Farm Conservation Plan*, Elizabeth Kendall has submitted a State Farm Conservation Plan (SFCP), approved by the Division of Agriculture on September 10, 2020. The SFCP is valid through September 20, 2025. The SFCP outlines Elizabeth Kendall's development plan which includes starting a mushroom growing farm which will eventually include other crops and/or pastureland for grazing. The applicant and her husband have secured business license #2109159 under the name Alaska Mushroom Products to support their plans. At the time of the applicant's application to purchase ADL 45586, infrastructure at the leasehold consisted of:

- A 32' x 48' main residence and growing/research area with electricity and septic, built in 2002;
- A 24' x 24' workshop with electricity, built in 1980;
- A 16' x 24' equipment shop, built in 1975;
- An 8' x 12' tool shed, built in 1975;
- A 16' x 24' season bunkhouse, built in 2006; and
- An abandoned mobile home previously used as a temporary bunkhouse that arrived on the subject parcel in 1981.

According to the applicant's SFCP, the planned short-term improvements to the subject parcel include clearing five acres to develop the farm. This area will be used to construct tunnel greenhouses of appropriate size and covered with the appropriate material to create the necessary environment for cultivating edible mushrooms, and/or vegetables and herbs. The SFCP lists several potential long term ground improvements including expanding the clearing to approximately 15 acres for additional greenhouses, clearing and fencing pastureland for livestock, clearing and replanting trees to be chipped up for mushroom growing medium, a borough approved well, and removing any unusable structures, equipment, or materials built or brought on the property by the original lessee.

e. Planning, Classification, and Mineral Orders:

1. *Planning:* A request for determination of plan designation and classification was submitted to DNR's Resource Assessment and Development Section (RADS) as the parcel was inadvertently omitted from the Eastern Tanana Area Plan (ETAP), adopted August 28, 2015. On August 17, 2021, Determination NC-10-004D16 was issued by RADS, which added the parcel to ETAP Management Unit F-49, which is designated Settlement which converts to a classification of Settlement Land.

The primary management intent for ETAP Unit F-49 is, "Unit is appropriate for land disposal during planning period." Goals for land classified as Settlement Land include providing suitable public land for transfer to private ownership for settlement purposes by providing seasonal residences for recreation, year-round residences for community expansion, and industrial or commercial development. A sale or lease renewal of the subject parcel supports the management goals of ETAP by providing an opportunity for private ownership of land currently owned by the state which allows for the establishment of a self-sustaining, diverse business with the applicant's company Alaska Mushroom Products.

2. *Land Classification Order:* A request for determination of plan designation and classification was submitted to RADS as the parcel was not included in ETAP.

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Determination NC-10-004D16 modified ETAP and LCO NC-10-004 to reflect the determination of the parcel being included in Unit F-49 and classified as Settlement Land.

3. *Mineral Order*: The parcel has been previously closed to mineral entry by Mineral Closing Order 239.

Mineral orders which close an area to mineral entry, close the area to new exploration and development of locatable minerals such as gold, copper, platinum, etc. Such mineral orders do not apply to leasable minerals (such as: oil, gas, coal, etc.), or exploration licensing for such, nor do they preclude reasonable surface access to these resources. However, *AS 38.05.130 Damages and Posting of Bond* stipulates that the land estate owner will be compensated for damages resulting from mineral exploration and development.

4. *Local Planning*: This area is zoned “General Use” by the Fairbanks North Star Borough.

5. *Flood Risk*: This parcel is in an area of minimal flood hazard, zone X.

- f. Traditional Use Findings: The subject parcel is located within the Fairbanks North Star Borough and a traditional use finding is therefore not required per *AS 38.05.830 Land Disposal in the Unorganized Borough*. There are no anticipated significant changes to traditional uses of the land and resources of this area as a result of the proposed action. Additional information on traditional use is welcome during the public comment period and if this proposal is approved, LCS will address the information received in a subsequent FFD, if one is issued. See the **Section VII. Submittal of Public Comments** and *Attachment B*: Public Notice for details on how to submit comment.

- g. Access, Including Access To and Along Public or Navigable Water:

Public Access: Access to this parcel is via a driveway extending from Chena Hot Springs Road on the northwest corner of the lease property. A driveway permit was issued in 1997 to the previous lessee, Charles Goff, from the Department of Transportation and Public Facilities (DOT&PF). The applicant is required to abide by the provisions outlined in the permit for the driveway. If the applicant needs to make any changes to the driveway in the future, she will potentially need to apply to DOT&PF for a new permit. Adjoining the driveway are the existing dirt roads providing access to the far east and southern borders of the property.

Access To and Along Public or Navigable Waters: In accordance with *AS 38.05.127 Access To Navigable or Public Water*, DNR will determine if a water body is navigable or public and establish easements or rights-of-way as necessary to ensure unobstructed access to and along the body of water. Regulations dictating the creation of easements or rights-of-way under this statute include *11 AAC 51.035 Determination of Navigable and Public Water*, *11 AAC 51.045 Easements To and Along Navigable and Public Water*, and *11 AAC 53.450, Buffer Strips, Reserved Areas, and Public Easements*.

Easements and Setbacks:

Preliminary Decision

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- **Section V. Description**, subsection b, states the exclusion of the Chena Hot Springs Road right of way. The parcel will not be subject to the ADL 17945 easement, but that portion of the ROW will be dedicated in the platting action while segregating the ROW from the rest of the N1/2 SE1/4, Section 28, Township 1 North, Range 2 East, Fairbanks Meridian, Alaska;
 - A 50-foot-wide section line easement in accordance with *AS 19.10.010 Dedication of Land for Public Highways* and *11 AAC 51.025 Section-line Easements*; and
 - Additional reservations and/or restrictions required through the local platting authority.
- h. Reservation of Mineral Estate: In accordance with section 6(i) of the Alaska Statehood Act and *AS 38.05.125 Reservation*, the State, in this decision, reserves unto itself the mineral estate, including oil and gas, and the rights expressed in the reservation clause of the statute, that being the right to reasonable access to the surface for purposes of exploring for, developing and producing the reserved mineral resources. Exploration and development, if any, which could occur, would be consistent with *AS 38.05.130 Damages and Posting of Bond* and other applicable statutes and regulations.
- i. Hazardous Materials and Potential Contaminants: There is currently an abandoned mobile home on the subject parcel. This structure was used as a temporary bunkhouse until 2006 and has no heat, power, or electricity and is in unlivable condition. It is unknown if the mobile home contains any hazardous materials or potential contaminants. The applicant plans to remove this mobile home from the property whenever possible. In order to proceed with the sale, the applicant will be required to sign an affidavit acknowledging the condition of the land and releasing the State from related liability.

The applicant is expected to inspect the subject parcel to ascertain the quality and condition of the land. The State makes no representations and no warranties, expressed or implied, concerning the existence or absence of any hazardous substances, hazardous wastes, contaminants, or pollutants on the land proposed for conveyance to the applicant. The State does not assume any liability for the removal of hazardous substances, hazardous wastes, contaminants, or pollutants, nor for the remediation of the site should such substances ever be identified.

- j. Survey: Preliminary Survey Determination #2021-07, dated May 20, 2021, determined the leased land to be unsurveyed. Upon DNR approval for conveyance of the parcel, a survey of the subject parcel performed by an Alaska Registered Land Surveyor under direction of the DMLW Survey Section will be required at the expense of the applicant. As the Chena Hot Springs Road right of way is excluded from the subject parcel, subdividing and platting through the Fairbanks North Star Borough will be required. The parcel is subject to a 50' Section Line Easement along the east boundary.

LCS will issue a notice to proceed to survey if no appeals are received, or when appeals are resolved, after issuance of an FFD. The applicant must hire a surveyor and the surveyor must apply to DMLW's Survey Section for Survey Instructions. After issuance of the Survey Instructions, the applicant must submit a completed survey to DMLW's Survey Section for review. The applicant's survey must be approved by DMLW and the local platting authority, if any, as set forth in the Survey Instructions. Upon approval and recordation of the survey, a notice to proceed to appraisal will be issued. The applicant bears the cost of survey.

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- k. Compensation/Appraisal: If the purchase is approved, the parcel will be sold at fair market value as required by AS 38.05.840(a) *Appraisal*. At the appropriate time, LCS will notify the applicant to begin the appraisal process and will provide a list of approved appraisers. The DMLW Appraisal Unit will provide appraisal instructions to an approved appraiser. The applicant bears the cost of appraisal. The date fixed for sale under AS 38.05.840(a) *Appraisal* and the valuation date of the appraisal will be set as the date of inspection by the appraiser. The appraisal will factor in the deed restrictions required by AS 38.05.321 *Restriction on Sale, Lease, or Other Disposal of Agricultural Land*.

VI. DMLW and Agency Review

Information and comments received from multiple sections within DMLW prior to and during agency review have been considered and included in the preparation of this PD. Agency review was conducted between June 1, 2021, through June 23, 2021. Comments pertinent to this proposed action received during agency review have been considered and addressed below. Additional timely comments received during the Public Notice period will be considered and addressed in a subsequent Final Finding and Decision if one is issued.

DNR DMLW LCS received brief comments of non-objection from the following agencies: DNR Division of Parks and Outdoor Recreation, DNR Division of Oil and Gas, and Department of Transportation and Public Facilities.

DNR DMLW LCS Response: LCS appreciates your review of the proposal.

DNR Division of Forestry (DOF): DOF thanked DMLW for the opportunity to review and comment on the project. DOF does not have forest resource concerns on the parcel, but there is always wildfire concern when DNR sells land in the wildland/urban interface. The parcel is already covered by DOF's Critical Management option, meaning that it already is protected by the highest level of response. However, the best defense against wildfire is for people to Firewise their homes, to help firefighters in their job protecting homes and property. Please make sure that the landowner is provided with [Firewise materials](#), and have them contact DOF with any questions.

DNR DMLW LCS Response: LCS appreciates the review of this proposed noncompetitive sale. The applicant will be provided with the above-mentioned wildland fire educational materials.

Alaska Department of Fish and Game (ADF&G): ADF&G thanked DMLW for the opportunity to review and comment on the project. ADF&G does not have any concerns or objections with this land disposal; however, we would recommend that the eastern boundary of the parcel along the section line should be dedicated prior to disposal.

DNR DMLW LCS Response: LCS appreciates the review of this proposed noncompetitive sale. A 50-foot-wide section line easement in accordance with AS 19.10.010 *Dedication of Land for Public Highways* and 11 AAC 51.025 *Section-line Easements* will be dedicated prior to disposal.

The following agencies or groups were included in the agency review, but no comment was received:

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- Department of Environmental Conservation, DNR Division of Agriculture, DNR Division of Geological and Geophysical Surveys, and DNR State Historic Preservation Office.

VII. Submittal of Public Comments

See *Attachment B: Public Notice* for specific dates and conditions.

Pursuant to AS 38.05.945 *Notice*, LCS is issuing public notice inviting comment on this Preliminary Decision.

In accordance with AS 38.05.946(a) *Hearings*, a municipality or corporation entitled to receive notice under AS 38.05.945(c) *Notice* may hold a hearing within 30 days after receipt of the notice. If a hearing is held, the Commissioner (or representative) shall attend the hearing. The Commissioner has discretion whether or not to hold a public hearing.

LCS will consider all timely, written comments received. If analysis of such comments indicates the need for significant changes to the PD, additional public notice for the affected lands will be given. Reducing the amount of land offered and making minor changes to any of the proposals will not be considered significant changes requiring additional public notice.

If the proposals are approved and no significant change is required, the PD, including any deletions, minor changes, and summary of comments and LCS responses will be issued as a subsequent FFD without further notice.

Only persons from whom LCS receives timely, written comment during the identified comment period will be eligible to file a request for reconsideration of the FFD. Upon approval and issuance of a FFD and these actions, a copy of the decision, orders, and amendment will be made available online at <http://landsales.alaska.gov/> and sent with an explanation of the request for reconsideration process to any party who provides timely written comment.

DNR is prepared to accommodate individuals with disabilities by providing auxiliary aids, services, or special modifications in order to participate in this review. Individuals who may need such assistance should contact DNR's Public Information Center. For more information refer to *Attachment B: Public Notice*.

**DEADLINE TO SUBMIT WRITTEN COMMENT IS
4:30 PM, TUESDAY, MARCH 8, 2022**

VIII. Stipulations

If approved for conveyance, the applicant will be required to comply with the following stipulations to complete the land sale:

1. As a condition of sale, the applicant must sign an affidavit acknowledging condition of land and releasing the State from related liability due to the presence of the abandoned mobile home.
2. The lessee must remain in good standing with respect to the terms of the lease until the lease is relinquished. If the lessee is not in good standing at any time prior to relinquishment of the lease, the purchase process will be halted until the lessee regains good standing as determined by DMLW.

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3. A notice to proceed to survey will be issued if no appeals are received, or when appeals are resolved, after issuance of a Final Finding and Decision. The applicant must hire a surveyor and the surveyor must apply to DMLW's Survey Section for Survey Instructions. The applicant's survey must be approved by DMLW and the local platting jurisdiction, if any, as set forth in the Survey Instructions. Survey costs shall be borne by the applicant.
4. Upon approval and recording of the survey, a notice to proceed to appraisal will be issued. Within two years from the date of the notice to proceed to appraisal, the applicant must hire an appraiser from DNR's Approved Appraiser list. The appraiser must apply for appraisal instructions issued by DMLW, and then must submit a completed fair market value appraisal to LCS in accordance with the appraisal instructions. DMLW must approve the appraisal. Appraisal costs shall be borne by the applicant.
5. Upon approval of the appraisal, a notice to proceed to purchase will be issued to the applicant. Within the time period specified in this notice, the applicant must submit the following to LCS:
 - A signed and notarized affidavit acknowledging condition of land and releasing the State from related liability;
 - A completed and signed Declaration of Intent form;
 - A signed and notarized Relinquishment of Land Lease form;
 - A completed Veteran's Land Discount form (if eligible); and
 - Payoff amount plus patent application and recordation fees OR minimum 5% of the purchase price as deposit plus land sales contract application and recordation fees. Fees are established under to *11 AAC 05.100 Land Disposals* and *11 AAC 05.200 Recorder's Office* and are subject to change. Some fees have been reduced by Director's Order Number 3.
6. Prior to the completion of the purchase and issuance of a state conveyance document, the applicant must remain in good standing with respect to all terms of the Contract for the Sale of Real Property throughout its term, if such a contract is issued. As an agricultural land sale, the Contract for the Sale of Real Property may include agricultural development requirements to be completed in a specified timeframe. The applicant must also remain in compliance with all applicable state and local ordinances and regulations, including all applicable taxes. Failure to do so may result in termination of the Contract for the Sale of Real Property.

Special Note: The applicant must complete steps 1-6 above by *February 7, 2024*, in order to ensure the applicant has a signed land sales contract before the lease expires on *May 7, 2024*. Failure to do this will result in the loss of the right to purchase this parcel of land or may need to enter into a lease renewal and incur associated costs.

If extenuating circumstances delay any of the stipulations listed above, the applicant is responsible for notifying LCS and receiving approval from LCS for the delay with new timeframes for completion to be given. Failure to do this could result in the closure of the purchase application. The purchase cannot be completed until all the above stipulations have been satisfied.

IX. Discussion and Alternatives

The original lease was issued in 1969 under the authority of *AS 38.05 Alaska Land Act* as amended and as stated on the lease agreement. DMLW finds that the issuance authority qualifies the lease for preference right claims under *AS 38.05.102 Lessee Preference*.

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The preference right applicant and current leaseholder of the parcel are in good standing with the terms of the lease as of the writing of this document. Title Report No. 21726 shows no third-party interests or liens. Therefore, the applicant qualifies under *AS 38.05.102 Lessee Preference* for a preference right claim.

The following alternatives were considered:

Alternative 1: Sell

Approve the proposed conveyance of the 79.88-acre subject parcel to the applicant in accordance with *AS 38.05.102 Lessee Preference* and *AS 38.05.321 Restriction on Sale, Lease, or Other Disposal of Agricultural Land*.

Alternative 2: Lease

Issue a lease renewal to the applicant.

Alternative 3: Retain

DNR will take no action and retain the subject parcel.

Alternative 1 will provide settlement and agricultural land to the private sector, generate revenue for the State, mitigate costs related to management of leased lands, and is compatible with area plan management intent. The sale of the parcel allows the applicant's improvements to remain *in situ* and provides the applicant assurances required for future planning, raising capital, expanding business operations, and passing property to heirs. Therefore, it is in the best interest of the State to sell the parcel as proposed in this decision.

Article VIII, Section 1 of the Alaska Constitution states, "it is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest." Alternative 1 provides a method for DNR to meet the obligations laid out in the Constitution and supports DNR's goal of providing lands for private settlement and supporting economic growth throughout Alaska. This is the preferred alternative.

Under Alternative 2, DNR will issue a lease renewal to the applicant. Under this option, the State Retains long-term interest in the land and the option to decline to renew the lease in the future. The lessee receives site control for a given period that may guide planning and business operations. At the end of any lease, the State may choose not to enter into a new lease and the parcel would remain Settlement lands. A lease renewal offers the applicant the option to continue using the site for agricultural enterprises as they currently are, while preserving state ownership and state use of lands in the future. However, the State expends resources managing leases that may outweigh the benefits of any revenue earned from them. This is not in the best interest of the State. This alternative is not preferred.

Under Alternative 3, the State would need to expend resources managing the land, while foregoing the income that could have been generated by a sale or lease. If the State chooses to neither sell nor lease the land to the current leaseholders, the lessee will be required to remove existing infrastructure from the land that was approved under an agricultural lease approved by the State and restore the land to its original condition. The applicant may lose the improvements if they are immobile, causing the applicant detriment. Retaining the subject parcel in state ownership is not in the best interest of the State. This alternative is not preferred.

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For the reasons outlined above, Alternative 1 is the preferred alternative. The sale of the subject parcel is beneficial both to the State, and to the prospective applicant. The sale provides land for settlement to the applicant and is the site of used and useful improvements. It provides maximum use for the public benefit in that it provides land to the private sector, the proposed parcel use does not disturb or curtail nearby state land uses, and it supports the long-term viability of a small business.

Recommendation follows.

Preliminary Decision

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X. Recommendation and Preliminary Decision

This Preliminary Decision for the proposed disposal of State lands described throughout this document is consistent with the overall management intent for state-owned lands. Alternative 1 is the preferred alternative because it is the maximum best use of state land, addresses a land claim under preference right statutes, and helps meet the mission of the land sales program.

This is a Preliminary Decision, and analysis of subsequent public review may result in changes to the preferred alternative of the proposed disposal of state lands. A Final Finding and Decision will address any significant issues or concerns during the public review process. If the applicant is unable to complete the stipulations by the end of the lease or lease extension term, DMLW may decide to close this purchase application or require the renewal for the lease to allow additional time to complete the purchase process.

The PD described above, as represented by the preferred alternative, has been reviewed and considered. I find that the recommended action may be in the best interest of the State and that it is hereby approved to proceed to public notice.

_____[signature on file]_____

Prepared by: Kelsey M. Anderson
Natural Resource Specialist 3
Land Conveyance Section
Division of Mining, Land and Water
Department of Natural Resources
State of Alaska

_____2/3/2022_____

Date of Signature

_____[signature on file]_____

Approved by: Rachel Longacre
Section Chief
Land Conveyance Section
Division of Mining, Land and Water
Department of Natural Resources
State of Alaska

_____2/3/2022_____

Date of Signature

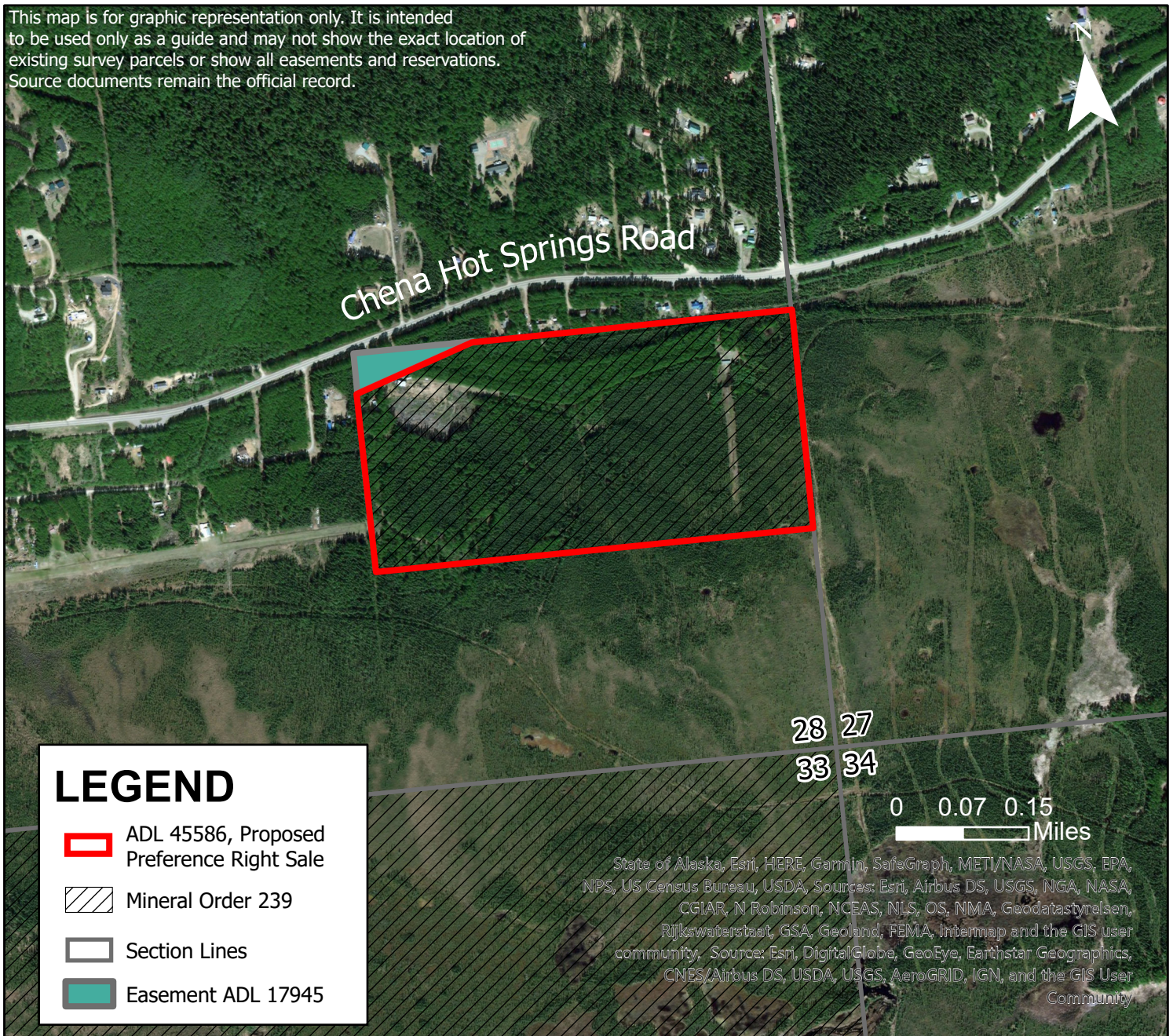


Elizabeth Kendall
ADL 45586

Attachment A: Vicinity Map

Proposed Noncompetitive Sale
Pursuant to AS 38.05.102

This map is for graphic representation only. It is intended to be used only as a guide and may not show the exact location of existing survey parcels or show all easements and reservations. Source documents remain the official record.



Section 28, Township 01 North, Range 02 East, Fairbanks Meridian

USGS Quad 1:63,360 Fairbanks D-1

For more information contact:
Kelsey M. Anderson
Department of Natural Resources
Division of Mining, Land and Water
Land Conveyance Section
Phone: 907-269-8851
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KMA 11/24/2021



STATE OF ALASKA,
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER

PUBLIC NOTICE

**Requesting Input for Proposed Noncompetitive Sale to
Preference Right Applicant - ADL 45586
AS 38.05.102, AS 38.05.321**

COMMENT PERIOD ENDS 4:30 PM, TUESDAY, MARCH 8, 2022

The Alaska Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Land Conveyance Section (LCS) is conducting a public notice for a proposed noncompetitive land sale located approximately eight miles east of the junction of the Steese Highway and Chena Hot Springs Road and is approximately 11 miles northeast of downtown Fairbanks.

Location: Located within DNR's Northern Region, the legal description for the parcel is that portion of the N1/2 SE1/4 of Section 28, Township 1 North, Range 2 East, Fairbanks Meridian, Alaska, according to the plat accepted by the United States Department of the Interior, Bureau of Land Management in Washington, D.C. on March 10, 1947, excluding the Chena Hot Springs Road right of way as depicted on the Department of Public Works, Division of Highways, Right of Way Map, Alaska Project No. S-06050(7), approved 10/2/62. Containing 79.88 acres, more or less.

To obtain the notice, Preliminary Decision (PD), or instructions on submitting comment, go to <https://dnr.alaska.gov/mlw/landsales/public-notice/> or <http://aws.state.ak.us/OnlinePublicNotices/>. For assistance in obtaining the documents by an alternative method, to request auxiliary aids, services, or special accommodations, contact DNR's Public Information Centers on State work days, Monday through Friday, between 10:00 AM and 5:00 PM in Anchorage at (907) 269-8400 or Fairbanks at (907) 451-2705 or the Southeast Land Office in Juneau at (907) 465-3400 or TTY: 711 for Alaska Relay or 1-800-770-8973 or go to <http://dnr.alaska.gov/commis/pic/> for additional contact information. Individuals who require special assistance must request assistance from the Public Information Center in Anchorage no later than 4:00 PM, Tuesday, March 1, 2022.

Pursuant to AS 38.05.945 *Notice*, the public is invited to submit comments on the Preliminary Decision. **The deadline for public comment is 4:30 PM, TUESDAY, MARCH 8, 2022.** Only persons from whom DNR DMLW LCS receives timely, written comment during the identified comment period will be eligible to file an appeal of the Final Finding and Decision (FFD). Written comment may be received by fax, email, or postal mail. To submit comments or for direct inquiries, contact Kelsey M. Anderson by mail at 550 West 7th Ave, Suite 640, Anchorage, AK 99501 or by fax at (907) 269-8916 or by email at kelsey.anderson1@alaska.gov. If you have questions, call Kelsey M. Anderson at (907) 269-8851.

If no significant change is required, the PD, including any minor changes and a summary of comments and responses, will be issued as the FFD without further notice. A copy of the FFD will be sent to any persons who commented timely on the PD.

DNR reserves the right to waive technical defects in this notice.